



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF K-O-A-A-

DATE: JUNE 21, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an architect, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner contends that she is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

With respect to her proposed endeavor, the Petitioner plans to design, produce, and market a multi-functional bag, called [REDACTED] for retail customers, non-profits, non-governmental organizations, and humanitarian purposes (homeless and refugee populations). She indicates that she intends to introduce a "product that offers its users a multi-functional bag that can be available to all sectors of the market. From the homeless person to the family that is leaving on a family vacation and wants an effortless way to carry necessities."⁴ In addition, the Petitioner states that she will partner "with organizations like the [REDACTED] to supply them with bags and form a "worker's cooperative" enlisting "the homeless who want to work . . . for this endeavor."

The Petitioner provides her [REDACTED] and a non-disclosure agreement with [REDACTED] (a bag manufacturer). She identifies her role for the project as [REDACTED] and states that her duties involve managing "financial and human resource roles." The [REDACTED] lists four other project team members, all under the direction of the Petitioner. In addition, she submits a letter from the senior pastor of her church pledging money for project funding, a letter from [REDACTED] endorsing her product, and a letter from [REDACTED] (a charitable organization with offices in Minnesota and Ghana) offering to manufacture [REDACTED] "sleeping bag component" at [REDACTED] vocational school in [REDACTED] Ghana.

The record includes an article from the American Psychological Association discussing the effects of poverty, hunger, and homelessness on children and youth. In addition, the Petitioner presents webpages describing the causes of homelessness, its effects, and potential solutions to the problem. She also

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The record reflects that the Petitioner received a master of architecture degree (2015) from the [REDACTED]. At the time of filing, the Petitioner was working as an intern architect with [REDACTED] designing and preparing "production drawings for multi-family residences."

⁴ The Petitioner's [REDACTED] describes her product as "a practical bag that can be used by campers, children on overnight stays, athletes as well as anyone who is in transit and may or may not have a room to sleep. This bag . . . can transform how people think about sleeping bags, overnight bags, and camping supplies."

offers a research article that emphasizes the importance of employment in preventing or ending homelessness. We find that the Petitioner's proposed work, which aims to advance her entrepreneurial project, create jobs for the homeless, and assist them through her product, has substantial merit.

Although the Director stated that the Petitioner established the national importance of her proposed endeavor of "designing and innovating for the homeless, elderly, and neglected communities in the United States," we will withdraw the Director's finding on this issue. To evaluate whether the Petitioner's work satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. The relevant question is not the importance of the fields, industries, or causes for which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890. Here, the record does not sufficiently explain or document the potential prospective impact of the specific proposed endeavor to support a finding that it has national importance.

The [REDACTED] includes financial information relating to the development and marketing of the [REDACTED] bag. According to this document, the Petitioner's project has start-up costs of \$250,000, and projected sales of \$250,000 in year one, \$500,000 in year two, and \$2,500,000 in year three. The document further states: "To keep the cost of production down and to preserve [REDACTED] unique identity, its components would be manufactured in various countries e.g. Ghana and Far East Asia. Assembly would be in the United States for quality control and to produce a singularly made-in-America piece of merchandise."

The documentation submitted, however, does not explain how these metrics demonstrate that the Petitioner's endeavor will offer substantial economic benefits to the region in the United States where her product will be assembled or to the nation. First, the Petitioner has not identified the location of [REDACTED] business and assembly operations, nor has she provided information regarding any projected job creation through its assembly operation in the United States.⁵ While the financial forecasts for [REDACTED] indicate that the Petitioner's project has growth potential, they do not show that benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*.⁶ In addition, although the Petitioner claims that the company "will provide a source of income for the homeless who want to work" on her project, she has not offered sufficient evidence that the area where [REDACTED] will be located is economically depressed, that she

⁵ For example, the non-disclosure agreement with [REDACTED] lists the Petitioner's residential apartment address. The Petitioner's documentation does not indicate where [REDACTED] operations will be housed, where its U.S. employees will work.

⁶ Furthermore, we note that the Petitioner does not adequately explain how these financial forecasts were calculated.

would employ a significant population of homeless individuals in that area,⁷ or that her project would offer the region or its population a substantial economic benefit through either its employment levels or product sales.

In addition, while she states that her “vision is to create a multi-functional bag that will become known globally for revolutionizing how many people think of the tote bag of today,” she does not sufficiently explain or demonstrate how her future work stands to affect a field or industry, such as the tote bag industry or architectural design field. Finally, although the Petitioner asserts that the product itself will offer benefits to vulnerable populations such as the homeless and refugees, she has not shown that her endeavor stands to impact those populations at a level consistent with having national importance. While she asserts that the functionality offered by the bag would significantly benefit those populations, the Petitioner has not described or documented plans for this product to be widely distributed or made available to them. The record does not include sufficient information or evidence regarding the number of individuals her product stands to impact, nor has the Petitioner adequately shown the prospective broader implications of her endeavor for the populations she proposes to help.

As the record lacks sufficient information and evidence to establish the national importance of her proposed endeavor(s) as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of K-O-A-A-*, ID# 1392402 (AAO June 21, 2018)

⁷ The Petitioner does not specify the number of homeless people she is proposing to employ, nor has she explained the capacity in which they would work considering she has indicated that [REDACTED] will be assembling the products.